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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,882	05/17/2005	Matthew Guinness	UDL23.001APC	4536

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IRVINE, CA 92614

EXAMINER
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CHAMBERS, TRAVIS SLOAN

ART UNIT	PAPER NUMBER
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2833

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/17/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/17/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcarter@kmob.com  
eOAPilot@kmob.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/531,882	<b>Applicant(s)</b> GUINNESS, MATTHEW	
	<b>Examiner</b> Travis Chambers	<b>Art Unit</b> 2833	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>04/19/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

The following claim(s) is/are objected to because of the noted informalities:

In reference to claim 1 line 4, the recitation "the second element" is seen to lack antecedent basis. For purposes of examination examiner interpret the recitation as " a second element."

In reference to claim 1, line 5, the recitation "two orthogonal directions " is seen to be vague and indefinite. An examination based on the merits is discussed herein.

-- Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

- The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claim(s) 7-13 and 17 is/are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- In reference to claims 7-12 and 17, the recitations concerning "4th through 7th set of indicia" (referring to claim(s) 7-12) and "fourth element" (referring to claim 17) are seen to be vague and indefinite because the numeric order was not amended to be

consistent with the amendment changing the claims from multi-dependent claims to each individual claim only depending from claim 6.

In reference to claims 13, the recitation concerning to fourth element is seen to be vague and indefinite because the numeric order was not amended to be consistent with the amendment changing the claims from multi-dependent claims to each individual claim only depending from claim 2. In reference to claim An examination on the merits, as best understood, is addressed below.

-- Appropriate correction of the above is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

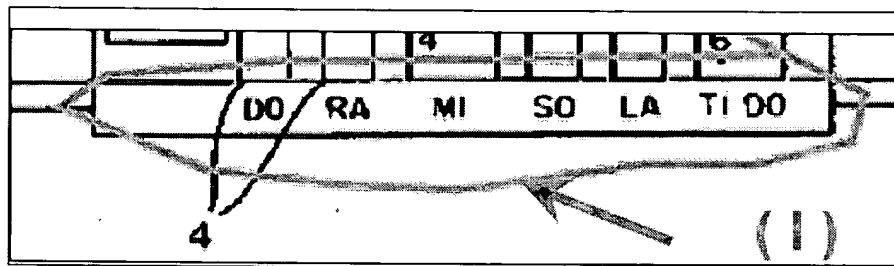
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hesnan (5524522).

In reference to claim 1, Hesnan teaches a first element (2 ; figure 2) that comprises a first set of indicia (6,7,8 ; figure 2 ) representing in linear form the structures of a plurality of musical scales, chords and/or modes, and a second element (3 ; figure 2) that comprises a second set of indicia (I; image below ) representing the names of the notes of a chromatic scale (pertaining to 7 ; figure 2), the second element (3 ; figure

2 ) being constructed and arranged for movement relative to the first element (2 ; figure 2 ) in two orthogonal directions (A and B ; figure 1), so as to indicate the relationship between the notes of the chromatic scale (pertaining to 7 ; figure 2) and the structure of a selected one of the musical scales, chords and/or modes.

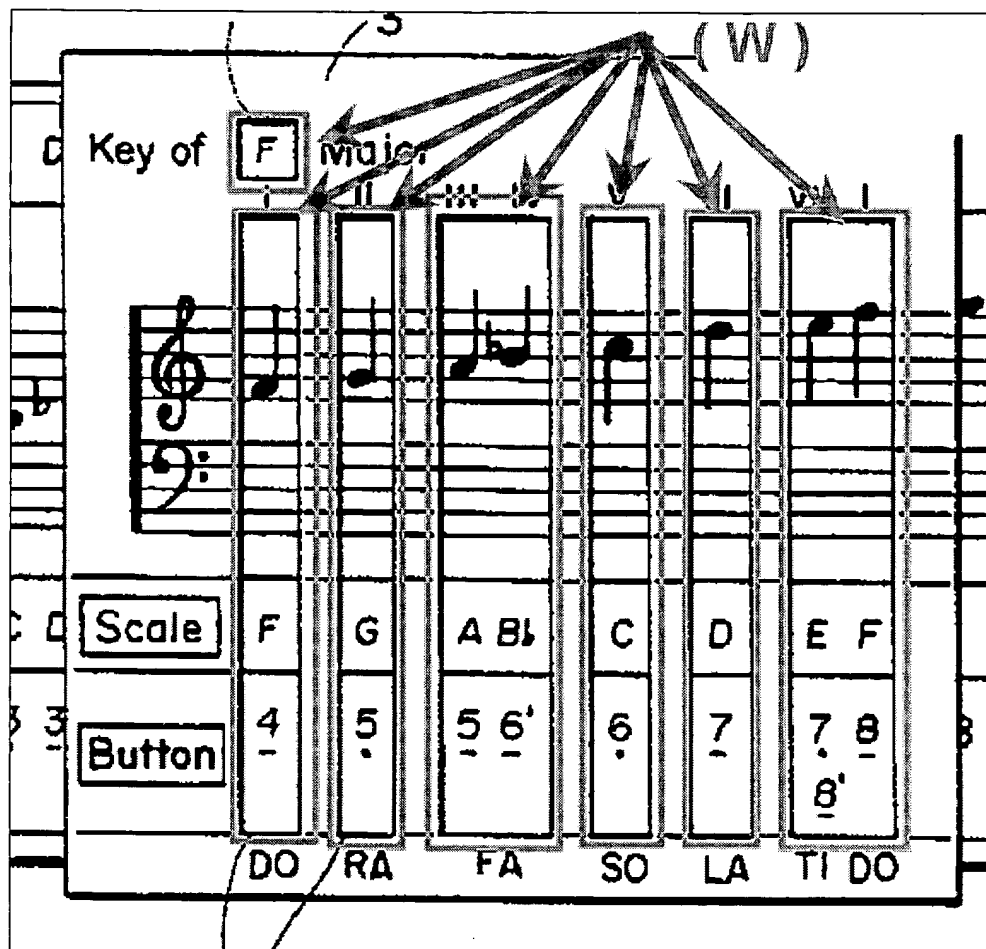
The claim language "orthogonal direction" is not clear as to what structure the two directions are orthogonal too. Hesnan shows directions (A and B : figure 1 ) that are orthogaonal to the viewing angle.



In reference to claim 2, Hesnan teaches the first (2 ; figure 2) and second (3 ; figure 2) elements comprise concentric substantially cylindrical elements (Col. 4, line(s) 13-19) that are constructed and arranged for rotational and axial relative movement.

In reference to claim 3, Hesnan teaches wherein the first element ( 2 ; figure 2) is located within the second element ( 3 ; figure 2).

In reference to claim 4, Hesnan teaches wherein the second element ( 3 ; figure 2) comprises at least one window ( W; image below ) through which a portion of the first element (2 ; figure 2 ) may be viewed.



In reference to claim 5, Hesnan teaches the at least one window ( W ) comprises a slot ( 4 and 5 ; figure 2 ) or transparent portion that extends longitudinally and or radially (pertaining to Col. 4 lines 13-19, where 4 and 5 will extend radially due to cylindrical formation of 2 and 3).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6-14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hesnan ( 5524522 ) in view of Calabro ( 2958251 ).

In reference to claim 6, Hesnan shows substantially the invention as claimed.

However Hesnan does not teach a third substantially cylindrical element located concentrically between the first and second elements.

It is known in the art of duplication of parts to duplicate a cylindrical element to create a third substantially cylindrical element. Calabro teaches of a third substantially ( 14 ; figure 2 ) cylindrical element located concentrically between the first ( 13 ; figure 2 ) and second elements (32 ; figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to duplicate a cylindrical element, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

One skilled in the art would have been motivated to choose such a part to duplicate to make it marketable to consumers that desire the advantages, reliability or performance associated with the particular arrangement.

In reference to claim 7, Hesnan shows substantially the invention as claimed. While Calabro teaches the third element (14 ; figure 2) is constructed and

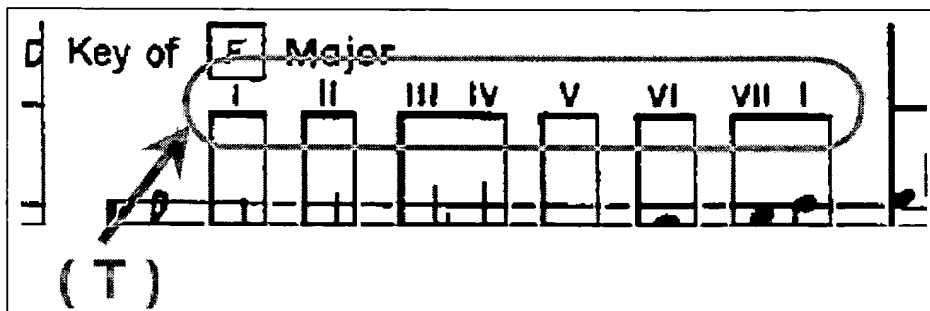
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arranged for one axial movement ( second element held stationary and third element moves axially left and right) relative to the second element and only rotational movement relative to the first element (pertaining to 13 ; figure 2 of Calabro) .

In reference to claim 8, Hesnan teaches of at least one window (W) through which a portion of the third element may be viewed (third element discussed above from claim 6).

In reference to claim 9, Hesnan teaches, in reference to above discussion of claim 6, wherein the second element (pertaining to Hesnan 3 ; figure 2) and third element (Calabro 14 ; figure 2) comprises aligned windows [ (Hesnan W) and (Calabro 18-28 ; figure 4) through which a portion of the first element (Hesnan 2 ; figure 2) may be viewed.

In reference to claim 10, Hesnan teaches the second element ( 3 ; figure 2 ) comprises a third set ( T; image below) of indicia representing various key signatures and the third element (as discussed above in claim 6 – 14 ; figure 2 ) comprises a fourth set of indicia ( near lead line 17 ; figure 4 ) for indicating relative to the third set of indicia (T) the appropriate key signatures for a selected mote or key.



In reference to claim 11, Hesnan shows substantially the invention as claimed.



While Calabro teaches of a third element (14 ; figure 2 ) comprises a fifth set of indicia ( near lead line 17 ; figure 4 ) representing graphically the pitch ranges of various musical instruments and/or voices and the second element ( 32 ; figure 1 ) comprises a sixth set of indicia ( depicted in embodiment of figure 5 ) for indicating relative to the fifth set (near lead line 17 ; figure 4) of indicia the musical notes corresponding to a selected one of the pitch ranges.

In reference to claim 12, Hesnan shows substantially the invention as claimed. While Calabro teaches a third element (14 ; figure 2 ) comprises a seventh set of indicia (32 ; figure 1) for indicating, relative to the second set of indicia (pertaining to that of Hesnan – I), the degrees of a major and/or minor scale and/or the note designations of a chromatic scale, for a selected scale, chord and/or mode.

In reference to claim 14, Hesnan shows substantially the invention as claimed.

However Hesnan does not teach the fourth element is constructed and arranged to be fitted removeably around the second element

Calabro teaches the fourth element (34 ; figure 1) is constructed and arranged to be fitted removeably (through element 36 ; figure 1, Col. 3 line(s) 23-30) around the second element (14 ; figure 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the teaching of Calabro to improve the invention of Hesnan.

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One skilled in the art would have been motivated to use the teachings of Calabro because, as taught by Calabro Col. 3, lines 23-30, it allows better access to securing or exchanging pertinent information to the device.

In reference to claims 13 and 17, Hesnan shows substantially the invention as claimed.

However Hesnan does not show a substantially fourth cylindrical element that is constructed and arranged for axial and/or rotational movement relative to the second element.

Calabro teaches of a substantially fourth cylindrical element ( 34 ; figure 2) that is constructed and arranged for axial and/or rotational movement relative to the second element (32 ; figure 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the teaching of Calabro to improve the invention of Hesnan.

One skilled in the art would have been motivated to use the teachings of Calabro to make it marketable to consumers that desire the advantages, reliability or performance associated with the particular arrangement.

~~In reference to claim 18, Hesnan shows substantially the invention as claimed.~~

However Hesnan does not teach the fourth element is constructed and arranged to be fitted removeably around the second element

Calabro teaches the fourth element (34 ; figure 1) is constructed and arranged to be fitted removeably (through element 36 ; figure 1, Col. 3 line(s) 23-30) around the second element (32 ; figure 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the teaching of Calabro to improve the invention of Hesnan.

One skilled in the art would have been motivated to use the teachings of Calabro because, as taught by Calabro Col. 3, lines 23-30, it allows better access to securing or exchanging pertinent information to the device.

Claims 15 ,16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hesnan ( 5524522 ) in view of Calabro ( 2958251 ) further in view of Colliard (4091766).

In reference to claim 15 and 19, Hesnan shows substantially the invention as claimed.

Calabro teaches of a fourth element.

However Calabro does not teach indicia for transportation and/or reference purposes.

Colliard teaches indicia ( displayed information on element 34 ; figure 1) for transportation and/or reference purposes.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the teaching of Colliard to improve the invention of Calabro.

One skilled in the art would have been motivated to use the teachings of Colliard because, as taught by Colliard Col. 4 line(s) 23-27), it allows easier identification information pertinent to an individuals device to be displayed.

In reference to claim 16 and 20, Hesnan shows substantially the invention as claimed.

Calabro teaches of a fourth element.

However Calabro does not teach an area adapted to receive pencil and/or pen markings.

Colliard teaches an area (34 ; figure 1) adapted to receive pencil and/or pen markings.

One skilled in the art would have been motivated to use the teachings of Colliard because, as taught by Colliard Col. 4 line(s) 23-27), it allows easier identification information to be displayed distinguishing an individual's device.

### ***Conclusion***

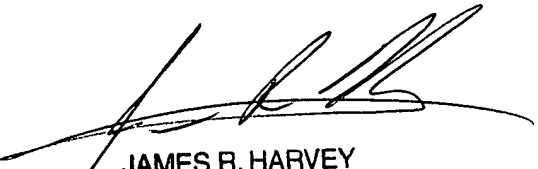
The prior listed on PTO form 892 that is made of record is considered pertinent to applicant's disclosure because it shows the state of the art with respect to applicant's claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis Chambers whose telephone number is 571-272-6813. The examiner can normally be reached on Monday-Friday 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on 571-272-2001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Travis Chambers  
TC  
1/5/2007



JAMES R. HARVEY  
PRIMARY EXAMINER